IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.569 OF 2005
IN
SECOND APPEAL NO.337 OF 2005

Smt.Shantabai Ganpatrao Gaikwad
(since deceased through her L.R.)
Sau. Mangal Shankar Patil ...Applicant

vs.

Smt. Muktabai Vithal Shirsath ...Respondent

CORAM: A.S.OKA,J.
DATE : APRIL 7,2005.

P.C.:

1. Rule. Respondent waives service. Second Appeal is admitted for final hearing. The decree is for partition and separate possession. Final decree proceedings will have to go on during the pendency of the Appeal. The Appellant is collecting rent from the tenants inducted in the suit building. As there is a decree passed by the Appellate Court declaring that the Respondent has one half share in the suit property, there cannot be unconditional stay and the claim of the Respondent will have to be protected.

2. Hence, I pass the following order :

i) Till final disposal of the Second Appeal, partition proceedings to go on. However, actual physical partition by metes and bounds shall not be effected.

ii) The decree for declaration granted in terms of clause 3 of the operative part is stayed subject to condition that :

a) Appellant/Applicant will not create any third party interest in respect of the suit property.

b) The Appellant/Applicant will keep on depositing in the trial Court a sum of Rs.1750/- per month on or before 10th day of every calendar month from May 2005 onwards.

c) As and when the amounts are deposited by the Appellant/Applicant, the Respondent will be permitted to withdraw the said amount. Deposit of the said amounts by the Appellant/Applicant and withdrawal thereof by the Respondent will be subject to final result of the Second Appeal and subject to adjustment in final decree proceedings.

iii) Civil Application is disposed of in above terms.

iv) Parties and concerned Court to act upon authenticated copy of this order.

JUDGE.